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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 LAWRENCE HUTT and PEGGY HUTT,
12 husband and wife and their marital
13 community,

14 Plaintiffs,

15 v.

16 PIERCE COUNTY, a political
17 subdivision of the State of Washington, et
18 al.,

19 Defendants.

CASE NO. C09-5271BHS

ORDER DENYING PLAINTIFFS'
JOINT MOTION FOR DEFAULT,
GRANTING DEFENDANTS'
MOTION TO DISMISS,
DENYING PLAINTIFFS'
MOTION FOR SANCTIONS,
DENYING PLAINTIFFS'
MOTION TO QUASH, AND
GRANTING DEFENDANTS'
MOTION TO STRIKE
PLAINTIFFS' SURREPLY

20 This matter comes before the Court on Plaintiffs' joint motion for default (Dkt. 11),
21 Defendants' motion to dismiss (Dkt. 24), Plaintiffs' motion for sanctions (Dkt. 25),
22 Plaintiffs' motion to quash (Dkt. 26), and Defendants' motion to strike Plaintiffs' surreply
23 (Dkt. 31). The Court has considered the pleadings filed in support of and in opposition to
24 the motions and the remainder of the file. The Court hereby grants the motion to dismiss
25 and the motion to strike and denies the motion for default, the motion for sanctions, and
26 the motion to quash for the reasons stated herein.

I. PROCEDURAL HISTORY

On May 14, 2009, Plaintiffs Lawrence and Peggy Hutt filed a civil rights complaint under 42 U.S.C. § 1983. Dkt. 6. On July 18, 2009, Plaintiffs filed an Amended Complaint against Defendants Pierce County, Pierce County prosecutors Sarah Richardson and Carl Hultman, Pierce County Superior Court Judge Bryan Chushcoff, and Pierce County Sheriff's deputies John Doe Clark and John Doe Halsey. Dkt. 10 ("Complaint").

On August 17, 2009, Plaintiffs filed a joint motion for default. Dkt. 11.

On September 17, 2009, Defendants filed a motion to dismiss. Dkt. 24. On October 7, 2009, Plaintiffs responded. Dkt. 27. On October 9, 2009, Defendants replied. Dkt. 28. On October 13, 2009, Plaintiffs filed a surreply. Dkt. 30. On October 13, 2009, Defendant filed a motion to strike Plaintiffs' surreply. Dkt. 31.

On October 7, 2009, Plaintiffs filed a motion for sanctions (Dkt. 25) and a motion to quash (Dkt. 26). On October 9, 2009, Defendants responded. Dkt. 29. On October 14, 2009, Plaintiffs replied. Dkt. 32.

II. FACTUAL BACKGROUND

On February 8, 2005, Defendant prosecutor Richardson filed a "Motion/Declaration for an Order to Show Cause Re Contempt" against Margaret Santiago, a.k.a. Peggy Hutt, for failure to pay child support based on an order of support entered on March 27, 2003, in King County. Dkt. 10 at 13. On February 8, 2005, an Order to Show Cause Re Contempt was entered directing Plaintiff Peggy Hutt to appear in Pierce County Superior Court in this matter and warning that failure to appear in the matter may result in a bench warrant. *Id.* at 11-12.

Out of this action, Judge Chushcoff signed an order of contempt and an order authorizing a bench warrant against Mrs. Hutt. Dkt. 10, ¶ 19. On May 7, 2007, deputies Clark and Halsey attempted to serve the warrant by going to Mrs. Hutt's residence and knocking on the door. *Id.* ¶ 20. Mr. Hutt answered the door, and then attempted to pull

1 the door shut behind him. *Id.* ¶ 22. The deputies removed Mr. Hutt’s hand from the door,
2 and as Mr. Hutt lost his grip on the door, one of the deputies entered the home and
3 arrested Mrs. Hutt. *Id.* ¶¶ 24-26. The other deputy continued to hold Mr. Hutt’s forearm
4 while using his body to block Mr. Hutt from entering the home. *Id.*

5 After the arrest, Mrs. Hutt was booked into Pierce County Jail on the warrant and
6 alleges that she was strip-searched. *Id.* ¶¶ 24-35. On May 8, 2007, she appeared in court
7 and bail was set at \$1,000. Dkt. 30, Exh. B.

8 On June 22, 2007, prosecutor Hultman filed documentation for a second bench
9 warrant to be issued for Mrs. Hutt. Dkt. 10, ¶ 40. A bench warrant was issued by Judge
10 Chushcoff and ultimately quashed on February 9, 2009. *Id.* ¶¶ 41-43. Plaintiffs now
11 bring this action pursuant to 42 U.S.C. § 1983, alleging violations of the Fourth, Fifth,
12 Eighth, and Fourteenth Amendments to the United States Constitution. *Id.* ¶ 62.
13 Plaintiffs also bring several tort claims under state law. *Id.* ¶¶ 60-61.

14 III. DISCUSSION

15 A. Motion for Default

16 The clerk shall enter a default against a party that “has failed to plead or otherwise
17 defend” Fed. R. Civ. P. 55(a). In this case, Defendants have acted with an intent to
18 defend this action by appearing and filing a motion to dismiss. Therefore, the Court
19 denies Plaintiffs’ Motion for Default.

20 B. Motion for Sanctions

21 Plaintiffs argue that defense counsel, the Pierce County prosecuting attorney, may
22 not represent all of the Defendants in this matter. Dkt. 25 at 1-2. Plaintiffs have failed to
23 identify a conflict of interest between any Defendant. Plaintiffs’ arguments are wholly
24 without merit. Therefore, the Court denies Plaintiffs’ motion for sanctions.

25 C. Motion to Quash

26 Plaintiffs “move the Court to quash the Appearance of attorney Michelle
27 Luna-Green that she made on behalf of the following defendants: (a) John Doe Clark; (b)
28

1 John Doe Halsey; (c) Bryan Chushcoff; (d) Carl Hultman; [and] (e) Sarah Richardson.”

2 Dkt. 26 at 1. Plaintiffs’ arguments are premised on the proposition that defense counsel
3 may not represent all of the Defendants in this action. Plaintiffs’ arguments are wholly
4 without merit. Therefore, the Court denies Plaintiffs’ motion to quash.

5 **D. Motion to Strike**

6 Defendants move to strike Plaintiffs’ surreply. A party may file a surreply only “for
7 requests to strike material contained in or attached to a reply brief” Local Rule CR
8 7(g). In this case, Plaintiffs filed a seven-page surreply that included new law and
9 arguments regarding the merits of Defendants’ motion to dismiss. Therefore, the Court
10 grants Defendants’ motion to strike because Plaintiffs’ brief violates the local rule.

11 **E. Motion to Dismiss**

12 Defendants move the Court to dismiss all of Plaintiffs’ federal claims except for the
13 claim under the Eight Amendment that is based on the factual allegation of a strip- search.
14 Dkt. 24 at 3.

15 Fed. R. Civ. P. 12(b)(6) motions to dismiss may be based on either the lack of a
16 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal
17 theory. *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990).
18 Material allegations are taken as admitted and the complaint is construed in the plaintiffs’
19 favor. *Keniston v. Roberts*, 717 F.2d 1295 (9th Cir. 1983). “While a complaint attacked
20 by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a
21 plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than
22 labels and conclusions, and a formulaic recitation of the elements of a cause of action will
23 not do.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (internal
24 citations omitted). “Factual allegations must be enough to raise a right to relief above the
25 speculative level, on the assumption that all the allegations in the complaint are true (even
26 if doubtful in fact).” *Id.* at 1965. Plaintiffs must allege “enough facts to state a claim to
27 relief that is plausible on its face.” *Id.* at 1974.

1 **1. Absolute Judicial Immunity**

2 Defendants argue that Plaintiffs' claims against Judge Chushcoff should be
3 dismissed because Judge Chushcoff is entitled to absolute judicial immunity. Dkt. 24 at
4 4-9. The Court agrees. It has long been recognized that
5 absolute immunity insulates judges from charges of erroneous acts or
6 irregular action, even when it is alleged that such action was driven by
7 malicious or corrupt motives, or when the exercise of judicial authority is
8 'flawed by the commission of grave procedural errors.'

9 *In re Castillo*, 297 F.3d 940, 947 (9th Cir. 2002) (citing *Forrester v. White*, 484 U.S. 219,
10 227-28 (1988), and *Stump v. Sparkman*, 435 U.S. 349, 359 (1978)) (internal citations
11 omitted).

12 In this case, Plaintiffs allege as follows:

13 Every time that Defendant Chushcoff acted as a judge in cause #
14 05-3-00317-0, including conducting hearings and entering orders, he knew
15 or should have known that Department 4 did not nor could have cognizance
16 over the King County court order.

17 Each time that Defendant Chushcoff ordered a bench warrant to be
18 issued for the arrest of Plaintiff Peggy Hutt, he knew or should have known
19 that he had no legal authority to do so.

20 Complaint, ¶¶ 47-48. Contrary to Plaintiffs' allegations, Judge Chushcoff had
21 jurisdiction over the action for the enforcement of failure to pay child support and to
22 initiate a contempt proceeding. *See* RCW 26.18.040. Therefore, Judge Chushcoff was
23 acting within his judicial capacity and is entitled to absolute judicial immunity. The
24 Court grants Defendants' motion on this issue and dismisses all claims against Judge
25 Chushcoff.

26 **2. Prosecutorial Immunity**

27 Immunity extends to protect a prosecutor who acts within his or her authority and
28 in a quasi-judicial capacity. *Imbler v. Pachtman*, 424 U.S. 409, 430-431 (1976). The
focus is on the nature or function of the prosecutor's activity. *Ybarra v. Reno*
Thunderbird Mobile Home Village, 723 F.2d 675, 678 (9th Cir. 1984). Where a

1 prosecutor acts as an advocate “in initiating a prosecution and in presenting the state’s
2 case,” absolute immunity applies. *Id.* (quoting *Imbler*, 424 U.S. at 431).

3 In this case, Plaintiffs allege as follows:

4 At the time that Defendant Richardson signed and filed the
5 documents in cause # 05-3-00317-0, she knew or should have known that the
6 proper jurisdiction for addressing any issues of contempt was King County
7 Superior Court which was the court that entered the order.

8 Defendant Hultman, at the time that he participated in cause #
9 05-3-00317-0, also knew or should have known that the Pierce County
10 Superior Court did not have cognizance over the court order.

11 Complaint, ¶¶ 45-46. The Court finds that the alleged actions of the county prosecutors
12 were within the quasi-judicial capacity of prosecutors because they were initiating a
13 prosecution and presenting the state’s case. Therefore, prosecutors Richardson and
14 Hultman are entitled to prosecutorial immunity. The Court grants Defendants’ motion on
15 this issue and dismisses all claims against prosecutors Richardson and Hultman.

16 **3. Qualified Immunity**

17 The doctrine of qualified immunity “protects government officials from ‘liability for
18 civil damages insofar as their conduct does not violate clearly established statutory or
19 constitutional rights of which a reasonable person would have known.’” *Pearson v.*
20 *Callahan*, 555 U.S. ----, 129 S. Ct. 808, 815 (2009) (quoting *Harlow v. Fitzgerald*, 457
21 U.S. 800, 818 (1982)). The U.S. Supreme Court in *Saucier v. Katz*, 533 U.S. 194 (2001),
22 established a two-prong approach for determining whether qualified immunity applies in
23 a given situation: (1) taken in a light most favorable to the plaintiff, do the facts alleged
24 show a constitutional violation; and (2) was the allegedly violated constitutional right
25 clearly established in light of the specific context of the case? *Saucier*, 533 U.S. at 201.
26 The dispositive inquiry in considering the second prong is whether it would be clear to a
27 reasonable official that the conduct was unlawful in the specific situation presented. *Id.* at
28 202 (citations omitted). The qualified immunity standard “gives ample room for mistaken
judgments by protecting all but the plainly incompetent or those who knowingly violate
the law.” *Hunter v. Bryant*, 502 U.S. 224, 227 (1991).

1 In this case, Defendants move the Court to dismiss Plaintiffs' claims against the
2 police officers who executed the arrest warrant and arrested Mrs. Hutt because, based on
3 the allegations in the complaint, the officers are entitled to qualified immunity. Dkt. 24 at
4 14-20. The Court agrees. With regard to the issue of execution of the warrant, Plaintiffs
5 allege as follows:

6 At the time that Defendants Clark and Halsey knocked on the
7 residence door at Plaintiffs' apartment, they knew that they were attempting
8 to serve a civil arrest warrant and that they did not have authority to enter the
9 residence without permission of a resident because they did not have an entry
10 warrant or a search warrant. Defendants Clark and Halsey had no
11 information that any criminal activity was suspected.

12 Complaint, ¶ 49. To the contrary, a properly issued bench warrant "carries with it the
13 limited authority to enter a residence in order to effectuate the arrest" *United States*
14 *v. Gooch*, 506 F.3d 1156, 1159 (9th Cir. 2007). Plaintiffs' claim is without merit.

15 With regard to the issue of excessive force, such claims "are to be judged under the
16 Fourth Amendment's 'objective reasonableness' standard." *Brosseau v. Haugen*, 543
17 U.S. 194, 197 (2004) (citation omitted). Plaintiffs allege as follows:

18 When Plaintiff Lawrence Hutt recognized Defendants Clark and
19 Halsey as sheriff's deputies, Plaintiff stepped out of his apartment while
20 pulling the door shut behind him.

21 Defendants Clark and Halsey immediately moved to prevent Plaintiff
22 Lawrence Hutt from closing the door with one grabbing Plaintiffs hand and
23 the other grabbing Plaintiff's arm.

24 By using their combined weight and simultaneously pulling on
25 Plaintiff's arm, Defendants Clark and Halsey succeeded in forcing Plaintiff
26 to release his grip on the door latch.

27 As soon as Plaintiff lost his grip on the door latch, one of the deputy
28 sheriff Defendants entered the apartment while the other deputy sheriff
Defendant continued to hold Plaintiff's forearm while using his body to
block Plaintiff from entering the apartment.

Complaint, ¶¶ 22-25. Plaintiffs have failed to show that the use of force to prevent Mr.
Hutt from closing the door was not objectively reasonable. It should be noted that
Plaintiffs' failure to allege a resultant injury from the use of force weighs against the
finding that the force was excessive. Plaintiffs' claim is without merit.

1 Therefore, the Court grants Defendants' motion to dismiss all of Plaintiffs' claims
2 against officers Clark and Halsey because, based on the allegations in the complaint, they
3 are entitled to qualified immunity.

4 **4. Conspiracy**

5 Plaintiffs assert a claim that Defendants conspired "to violate civil rights, including
6 deprivation of constitutional rights under color of law." Complaint, ¶ 62. To establish
7 the defendants' liability for a conspiracy, a plaintiff must demonstrate the existence of "an
8 agreement or 'meeting of the minds' to violate constitutional rights.'" *Mendocino*
9 *Environmental Center v. Mendocino County*, 192 F.3d 1283, 1301 (9th Cir. 1999)
10 (citation omitted). Plaintiffs have failed to allege any facts that would establish a
11 conspiracy to violate their constitutional rights. Therefore, the Court grants Defendants'
12 motion on this issue and dismisses this claim.

13 **5. Municipal Liability**

14 A municipality is liable under 42 U.S.C. § 1983 for the actions of its employees if
15 those actions were taken pursuant to the policy, custom or practice of the municipality, or
16 if the actions were taken by, or at the direction of, the person with final policy making
17 authority for the municipality. *Monell v. Dep't of Social Services of City of New York*,
18 436 U.S. 658, 690 (1978). However, if the employees are not liable for constitutional
19 violations, then municipal liability is precluded as a matter of law. *Fairley v. Luman*, 281
20 F.3d 913, 916-917 (9th Cir. 2002).

21 In this case, Defendants request that the Court dismiss Plaintiffs' claims against
22 Pierce County that are based on the actions of employees who are entitled to immunity.
23 The Court grants Defendants' motion on this issue because the employees are entitled to
24 immunity from suit, which precludes liability on these claims against the employer Pierce
25 County.

1 **6. Conclusion - Motion to Dismiss**


2 The Court grants Defendants' motion to dismiss as to all claims against Judge
3 Chushcoff on the basis of absolute judicial immunity. The Court grants Defendants'
4 motion to dismiss as to all claims against county prosecutors Hultman and Richardson on
5 the basis of prosecutorial immunity. The Court grants Defendants' motion to dismiss as
6 to all federal claims against officers Clark and Halsey on the basis of qualified immunity.
7 The Court grants Defendants' motion to dismiss Plaintiffs' conspiracy claim because
8 there is an absence of allegations to establish a claim for conspiracy. The Court grants
9 Defendants' motion to dismiss Plaintiffs' municipal liability claims against Pierce County
10 for the actions of Judge Chushcoff, prosecutors Hultman and Richardson, and officers
11 Clark and Halsey.

12 **IV. ORDER**

13 Therefore, it is hereby

14 **ORDERED** that Plaintiffs' joint motion for default (Dkt. 11) is **DENIED**,
15 Defendants' motion to dismiss (Dkt. 24) is **GRANTED** as stated herein, Plaintiffs'
16 motion for sanctions (Dkt. 25) is **DENIED**, Plaintiffs' motion to quash (Dkt. 26) is
17 **DENIED**, and Defendants' motion to strike Plaintiffs' surreply (Dkt. 31) is **GRANTED**.

18 DATED this 20th day of November, 2009.

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21 BENJAMIN H. SETTLE
22 United States District Judge
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